

FORT HALL WATER USERS ASSOCIATION, Appellant v. SUPERINTENDENT, FORT HALL AGENCY, BUREAU OF INDIAN AFFAIRS, Appellee	: Order Docketing and Dismissing : Appeal as Premature : : : : Docket No. IBIA 96-75-A : : : June 13, 1996
--	--

On June 10, 1996, the Board of Indian Appeals (Board) received a letter from the Fort Hall Water Users Association (the Association), through its Chairman, Floyd O. Johnson, asking the Board to enforce an undated stipulation entered into by the Association and the Bureau of Indian Affairs (BIA). The stipulation provided the basis for the May 16, 1978, dismissal of an appeal that appellants had filed with the Board against the Portland Area Director, BIA. The stipulation states in pertinent part that

the Bureau of Indian Affairs has agreed that the Superintendent of the Fort Hall Agency or his designate and the Project Manager of the Fort Hall Irrigation Project will meet with the Board of Directors of the Fort Hall Water Users Association at 2:00 o'clock p.m. on the first Tuesday of each month at the Fort Hall Irrigation Project Office for the purpose of (1) advising said Board of Directors of any and all matters relating to the operation and maintenance of the Fort Hall Irrigation Project, including, but not limited to, such matters as: acquisition, appropriation, protection, rehabilitation, or disposal of water rights and conveyance and storage rights and facilities; personnel changes; proposals for purchasing, leasing, or disposing of equipment; operation and maintenance of the system, facilities and equipment; proposed or enacted tribal ordinances, administrative regulations or rulings, and legislative enactments and appropriations or judicial rulings affecting the Fort Hall Irrigation Project, and (2) seeking and discussing the views and comments of the Fort Hall Water Users Association through its Board of Directors with respect to all such matters affecting the Fort Hall Irrigation Project.

The Association's letter, which does not show service on anyone other than the Board, states:

May 16, 1978, Alexander H. Wilson, Chief Administrative Judge, signed an order pertaining to the Fort Hall Irrigation Project. Part of that order stipulated that the Superintendent of the Fort Hall Indian Agency was to meet with the Board

of Directors of [the Association] at 2:00 P.M. on the first Tuesday of each month.

I am writing to inform, you that the current Superintendent * * * has refused to meet with our Board of Directors since last fall.

We would appreciate a directive from you to him reaffirming that by law he or his designate must met with us.

The Association's letter seeks enforcement of the stipulation which led to the May 16, 1978, dismissal of its earlier appeal. The Board does not have continuing jurisdiction over a matter unless it specifically retains such jurisdiction. It did not retain jurisdiction in the order dismissing the Association's earlier appeal. Therefore, the Board is not the proper place at this time to seek enforcement of the stipulation. Even if it had jurisdiction, the Board would not issue the requested directive without allowing an opportunity for the Superintendent and/or the Area Director to respond.

The Association can, however, begin a new proceeding by following the procedures set out in 25 CFR 2.8, which establishes a mechanism for making the failure of a BIA official to take action the subject of an appeal to the next appellate level. Under 25 CFR 2.8(a), the Association must first give the Superintendent an opportunity to take the action requested, before it may proceed to the Area Director and the Board, if necessary.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this matter is docketed, but dismissed as premature.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge